Copyright Board of Canada

2008-2009

Estimates

Part III - Report on Plans and Priorities

Jim Prentice
Minister of Industry

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SECTION I – DEPARTMENTAL OVERVIEW

Minister's Message

The Government of Canada is committed to creating an environment where all Canadians have every opportunity for continued prosperity.

We laid out our long-term economic plan in *Advantage Canada*. It identified five Canadian objectives, related to tax reduction, debt reduction, entrepreneurship, knowledge in the workforce and infrastructure, which will help us improve our quality of life and succeed on the world stage. I'm pleased to note the commonality between these advantages and Industry Canada's mission of fostering a growing, competitive, knowledge-based economy.

Clearly, our government is making strides towards achieving our long-term goals. For example, we have provided $190 billion in broad-based tax relief over this and the next five years, including cuts to corporate, small business and personal taxes. Our debt repayment goals have been accelerated by three years. We're setting the right conditions for entrepreneurs to thrive, for research and development to flourish, for additional competition and growth in the wireless sector and for our workforce to build on its expertise. Finally, we continue to invest heavily in our physical infrastructure to build the networks needed to carry our people, goods and services across Canada and beyond.

In May 2007 Prime Minister Harper unveiled our Science and Technology Strategy, *Mobilizing Science and Technology to Canada's Advantage*. It is a policy framework that has received wide acclaim, both in Canada and internationally. Our government believes that science and technology, and research and development, are more critical than ever to pushing forward the frontiers of knowledge and transforming that knowledge into new products, services and technologies.

Our hard work is paying off. The economic fundamentals are in place to help us realize our goals. We boast strong public finances, an economy that is as healthy as it has been for a generation and low unemployment.

As Minister of Industry, I look forward to implementing our government's agenda for providing effective economic leadership — an agenda that provides concrete, realistic solutions to the economic challenges our country is facing.

As always, we must build on our success as a nation. In this regard, Industry Canada and its portfolio partners continue to strive towards a fair, efficient and competitive marketplace, an innovative economy, competitive industries and sustainable communities — in short, outcomes that will help Canadians continue to enjoy a quality of life that is second to none.

Copyright Board of Canada

It gives me great pleasure to present the annual *Report on Plans and Priorities* for the Copyright Board of Canada, outlining their main initiatives, priorities, and expected outcomes for the upcoming year.

Jim Prentice
Minister of Industry

Management Representation Statement

March 2008

I submit for tabling in Parliament the 2008-09 Report on Plans and Priorities for the Copyright Board of Canada.

This document has been prepared based on the reporting principles contained in the *Guide to the preparation of Part III of the 2008-09 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board of Canada Secretariat guidance;
- It is based on the department's strategic outcome and program activity that were approved by the Treasury Board;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved planned spending numbers from the Treasury Board of Canada Secretariat.

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Stephen J. Callary
Vice-Chairman and Chief Executive Officer

Raison d'être

The Copyright Board of Canada's program objective is to set royalties which are fair and equitable to both copyright owners and users of copyright-protected works. This includes setting fair and equitable terms and conditions so as to permit the use of works when the owner of the copyright cannot be located.

The Board is an independent administrative agency that has been conferred department status for purposes of the *Financial Administrative Act*. The mandate of the Board is set out in the *Copyright Act* (the "*Act*"). The Board is empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works when the administration of such works is entrusted to a collective society. The Board also sets terms and conditions so as to permit the use of works when the owner of the copyright cannot be located.

The *Act* requires that the Board certify tariffs in the following fields: the public performance or communication of musical works and of sound recordings of musical works, the retransmission of distant television and radio signals, the reproduction of television and radio programs by educational institutions and private copying. In other fields where rights are administered collectively, the Board can be asked by a collective society to set a tariff; if not, the Board can act as an arbitrator if the collective society and a user cannot agree on the terms and conditions of a licence.

The examination process of a tariff is always the same. The collective society must file a statement of proposed royalties which the Board publishes in the *Canada Gazette*. Tariffs always come into effect on January 1. On or before the preceding 31st of March, the collective society must file a proposed statement of royalties. The users targeted by the proposal (or in the case of private copying, any interested person) or their representatives may object to the statement within sixty days of its publication. The collective society in question and the opponents will then have the opportunity to argue their case in a hearing before the Board. After deliberations, the Board certifies the tariff, publishes it in the *Canada Gazette*, and explains the reasons for its decision in writing.

As a rule, the Board holds hearings for each contested tariff. In order to reduce costs for the parties involved, the Board itself can also decide to merge several tariff hearings together. In addition, no hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. Hearings are also generally dispensed with on preliminary or interim issues. No hearings have been held yet for a request to use a work whose owner cannot be located. The process has been kept simple. Information is obtained either in writing or through telephone calls.

The Board is an economic regulator. It deals with complex social, cultural, demographic, economic and technological issues (e.g., communications technology, use of music over the Internet, technological protection measures (TPMs) and digital rights management (DRMs)). The Board's decisions are not appealable, but can be the subject of judicial review by the Federal Court of Appeal. The Board has existed in one form or another since the 1930s, but its jurisdiction was significantly expanded in 1989 and again in 1997.

The Board sets tariffs that are estimated to be worth over $300 million annually. In fact, copyright tariffs underpin several industries (such as broadcasting, the arts, film, the Internet publishing, software, engineering and architecture) which together generated in 2004 an amount representing 4.5% of Canada's GDP, employed 875,000 Canadians and grew between 1997 and 2004 at a rate exceeding that of the Canadian economy[1]. The stakes are considerable both for copyright holders and for users of copyright. Consequently, interventions before the Board are thorough, sophisticated and often involve expert witnesses, litigation specialists and detailed econometric, business and financial submissions/evidence. Over the last five years, the number of expert witnesses appearing at Board hearings has even doubled.

The Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly and time-consuming court challenges.

Innovation through new knowledge has become a main source of competitive advantage in all areas of economic endeavour. The use and re-use of cultural and entertainment content (such as musical works) have become widespread with the advent of new media and on-line services, new playback and editing technologies and new uses in conventional media. These matters manifest themselves in some of society's most complex and contentious issues, including the downloading of musical content over the Internet using file-sharing software, the use of digital decoders to receive scrambled TV signals and the proliferation of duplication technologies, including computers, which have the capability to make digital copies of CDs and DVDs.

The Copyright Board of Canada recognizes the need to ensure an effective and efficient copyright regulatory regime in order to attain the maximum productivity in those sectors that create and use copyrighted works. Further, the strategic outcomes of a fair and competitive marketplace and reasonable opportunities for Canadian firms to export copyright protected goods and services in the music, content creation and programming areas, as well as the downstream broadcasting, publishing and entertainment industries will be impacted by the performance of the Copyright Board of Canada.

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the peculiar circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion, for instance in the area of the enforcement of its tariffs and the interpretation of its own regulations.

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[1] Source: CONNECTUS Consulting Inc., *The Economic Impact of Canadian Copyright Industries - Sectoral Analysis*, Report submitted to the Copyright Policy Branch, Department of Canadian Heritage, March 31, 2006.

The Board also enjoys a fair amount of discretion, especially in areas of fact or policy. In making decisions, the Board itself has used various principles or concepts. Strictly speaking, these principles are not binding on the Board. They can be challenged by anyone at anytime. Indeed, the Board would fetter its discretion if it considered itself bound by its previous decisions. However, these principles do offer guidance to both the Board and those who appear before it. In fact, they are essential to ensuring a desirable amount of consistency in decision-making.

Among those principles, the following seem to be the most prevalent: the coherence between the various elements of the public performance of music tariffs; the practicality aspects; the ease of administration to avoid, as much as possible, tariff structures that make it difficult to administer the tariff in a given market; the search for non-discriminatory practices; the relative use of protected works; the taking into account of Canadian circumstances; the stability in the setting of tariffs that minimizes disruption to users; as well as the comparisons with "proxy" markets and comparisons with similar prices in foreign markets.

Organizational Information

Responsibilities and Organization

Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

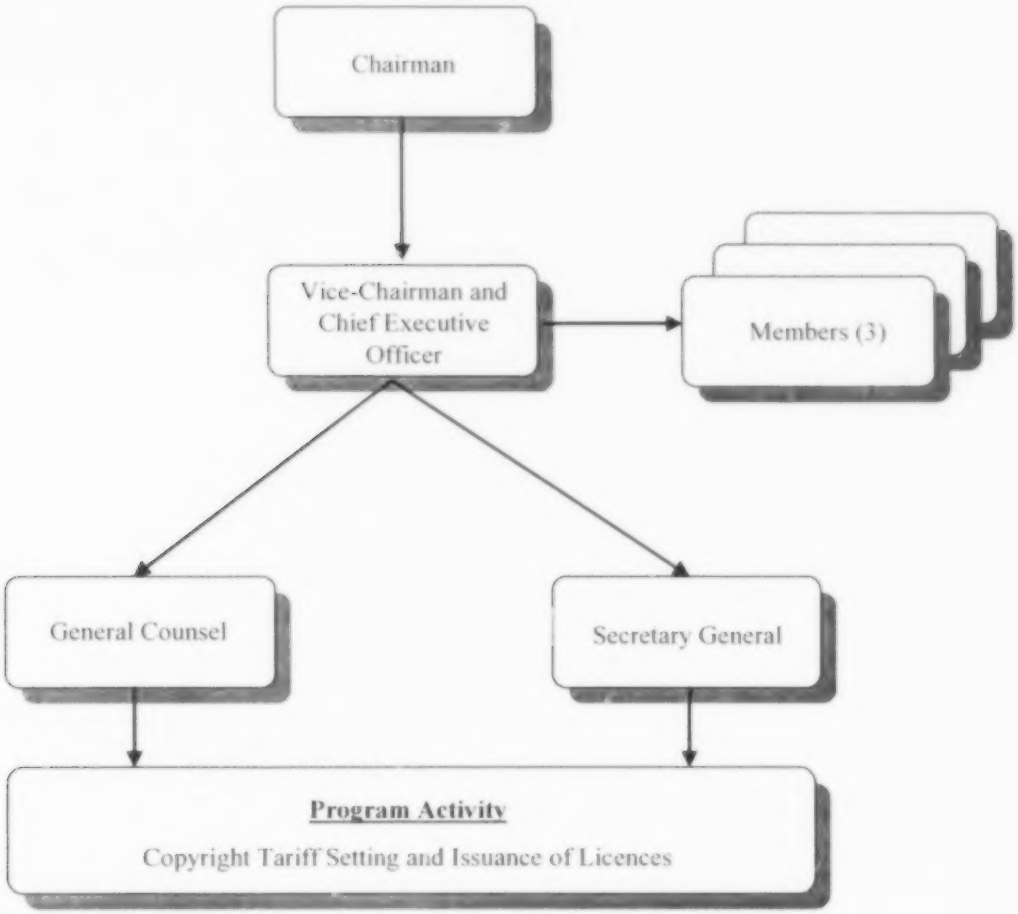
The *Act* requires that the Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and apportions its caseload among the members.

The *Act* also designates the Vice-Chairman as Chief Executive Officer of the Board. He or she exercises direction over the Board and supervises its staff.

The organizational structure of the Board follows the requirements set out in section 66 and following sections of the *Act* (See Figure1).

Copyright Board of Canada

Figure 1 - Organizational Structure of the Board



The Board has 17 Full-Time Equivalents (5 Governor in Council appointees and 12 employees).

Program Activity Architecture (PAA) Crosswalk

2008-2009	
Strategic Outcome Fair decision-making to provide proper incentives for the creation and use of copyrighted works.	
Old Title of Program Activity Render decisions and issue licences	**New Title of Program Activity** Copyright Tariff Setting and Issuance of Licences

Voted and Statutory Items

2008-2009		($ thousands)	
Vote or Statutory Item	Truncated Vote or Statutory Wording	**2008-09 Main Estimates**	**2007-08 Main Estimates**
50	Program expenditures	**2,317**	2,295
(S)	Contributions to employee benefit plans	**289**	302
	Total Department	**2,606**	2,597

Explanation of change: The difference between the 2007-2008 and 2008-2009 Main Estimates is due to salary increases and adjustments to the Employee benefit plans.

Departmental Planned Spending and Full-Time Equivalents

($ thousands)	Forecast Spending 2007-08	**Planned Spending 2008-09**	Planned Spending 2009-10	Planned Spending 2010-11
Copyright Tariff Setting and Issuance of Licences	2,597	**2,606**	2,606	2,606
Budgetary Main Estimates (gross)	2,597	**2,606**	2,606	2,606
Less: Respendable revenue				
Total Main Estimates	2,597	**2,606**	2,606	2,606
Adjustments:				
Supplementary Estimates:	114			
Collective Bargaining	22			
Total Adjustments	136			
Total Planned Spending	2,733	**2,606**	2,606	2,606

Total Planned Spending	2,733	**2,606**	2,606	2,606
Less: Non-Respendable revenue				
Plus: Cost of services received without charge	364	**352**	352	352
Net cost of Program	3,097	**2,958**	2,958	2,958

Full-Time Equivalents	17	17	17	17

Summary Information

The Mandate of the Copyright Board of Canada
The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licences when the copyright owner cannot be located. The Board may also determine the compensation to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

Financial Resources
($ thousands)

2008-09	2009-10	2010-11
2,606	2,606	2,606

Human Resources
(Full-time Equivalents (FTE))

2008-09	2009-10	2010-11
17 FTE	17 FTE	17 FTE

Departmental Priorities
($ thousands)

	Type	Planned Spending		
		2008-2009	2009-2010	2010-2011
1. Ensure timely and fair processes and decisions	Ongoing	2,606	2,606	2,606
2. Advance the analytical framework for decisions and the regulatory processes for tariff-setting	Ongoing			
3. Improve management practices	Ongoing			

Departmental Plans and Priorities

There are three priorities associated with the Copyright Board of Canada's strategic outcome of achieving fair decision-making to provide proper incentives for the creation and uses of copyrighted works. These are:

1. Ensure timely and fair processes and decisions

To achieve this priority, the Board will need to ensure that participation costs in the hearing process are being kept as low as possible, thus encouraging participation of the appropriate parties and streamlining the process. The Board will also need to provide appropriate guidance, information and analysis to the participants in order to facilitate the examination process and to foster greater participants' satisfaction. This will be done in particular through telephone advisories and case management meetings with representatives. Finally, by engaging in pre-hearing consultations and information gathering, and by conducting well organized proceedings which address key issues facing copyright-related industries, the Board will be able to issue timely, fair and consistent decisions.

The monitoring of this priority will be achieved by conducting informal surveys of hearing participants, with follow-up examination and determination of alternative procedural practices to improve the efficiency of the regulatory process. The achievement of this result is also directly monitored through the timely conduct of hearing processes and lack of interruption in proceedings due to administrative and technical delays. In addition, the implementation of a pre-hearing joint statement of (non-contested) facts and handling of legal issues solely through written submissions will improve the efficiency of the process. Finally, the Board plans to continue to examine, for each process, how to structure and sequence witnesses and hearing stages so as to eliminate duplication and maximize time spent on relevant issues.

In addition, in 2008-2009 the Board will continue to examine alternatives to current procedures based upon input from hearing participants as part of a plan to develop and implement a more active involvement in pre-hearing information gathering aimed at reducing time and cost to participants while safeguarding the fairness of procedures.

The rationale underlying this priority is to minimize administrative costs to Canadians from the setting of tariffs and to streamline the process in the face of increasing complexities in hearing subject matter, thus increasing regulatory efficiency. To the extent that this also leads to fairer decision-making, the overall innovation capability of parties affected by the copyright tariff process will be improved.

2. Advance the analytical framework for decisions and the regulatory processes for tariff-setting

Among the most significant risks which the Board faces in achieving its strategic outcomes are the potentially disruptive impact of new technologies, in particular on how copyright material is utilized, distributed and monitored. Fair and equitable decisions critically depend on the Board's ability to identify, understand and assess the industry issues before they undermine or adversely impact existing copyright regimes. The Board's approach to managing the technology risk is to

systematically monitor relevant journals, other publications and web-sites, and to attend industry seminars and conferences.

Knowledge of the international experience is also a key tool in addressing the challenges of changing technology and the impact of global events. By comparing experiences across different countries, the Board expects to gain early warning of significant developments and their likely impacts on the Canadian situation.

Leadership in copyright matters will continue to build on the groundwork performed in the last two years. The Board plans to continue its leadership role in the establishment and expansion of international activities such as sharing of procedures, data, analysis and other information. In this regard, the Board will participate in meetings of an international forum of copyright tribunal administrators to be convened by WIPO.

The Board expects to play a key organizational role in arranging fora to bring the international community together. The next major forum is targeted for 2008 in Singapore. The Board views its leadership within the international community as a primary horizontal initiative over the next three years. With a view to further this leadership, the Board also acted as a host organization for the 2005 annual congress of the international Society for Economic Research on Copyright Issues, participated actively in the 2006 congress in Singapore, and contributed to the organization of a special session on copyright collective organizations at the 2007 annual congress in Berlin. The Board will continue to be involved with this organization in 2008-2009.

By its involvement in international activities as they relate to copyright tariff setting in other parts of the world, the Board ensures that its own tariff-setting processes and decisions are cognizant of developments outside of Canada.

3. Improve Management Practices

The Copyright Board of Canada will continue to work in partnership with four other small quasi-judicial agencies: the Canadian Artists and Producers Professional Relations Tribunal, the Registry of the Competition Tribunal, the Transportation Appeal Tribunal and the Public Service Staffing Tribunal (the "cluster group") on implementing government-wide initiatives and continuing valuable work on those initiatives already implemented. The cluster group will continue to focus on the implementation of the new *Public Service Modernization Act*, particularly in preparation for the Management Accountability Framework Assessment. The Board also works collaboratively with other networks such as the Small Agency Transition Support Team for expertise related to human resources issues, and the Micro and Small Agency Labour Management Consultation Committee to ensure adherence to the *Public Service Labour Relations Act*.

The Board has established a learning framework for its employees. It will finalize its training and development policy and continue to develop individual training plans for each employee. It will ensure that employees maintain and upgrade their skills so that they may meet the challenges of the future.

The Board will update its Human Resources Plan to include succession planning as part of the Public Service Renewal process. It is essential that the Board continue to ensure that it has the capacity it needs to better react to the changing nature of work driven by technology which will result in better service to Canadians.

In addition, it will finalize its evaluation strategy and performance measurement tools. The Board will also update and implement its Business Continuity Plan. The primary objective of this plan is to enable our organization to re-establish normal business operations after a disaster. It will also result in the identification of necessary resources to support business continuity, including personnel, information, equipment, financial allocations, infrastructure protection and accommodations.

Over the years, the Board has developed an extensive suite of internal policies that help create the type of environment that promotes excellence and while being focussed on performance and accountability, it also contributes to the workplace well-being of its employees. To ensure that all of these policies remain up-to-date and relevant, a policy review and renewal cycle will be developed to integrate a culture of change. This cycle will ensure that all policies are reviewed regularly, are updated as needed and are in line with the government's objectives, Treasury Board policies and the Board's own requirements.

SECTION II – ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME

Copyright Board of Canada

Analysis by Program Activity

Strategic Outcome:

Fair decision-making to provide proper incentives for the creation and use of copyrighted works.

The following activity contributes to this strategic outcome:

Program Activity Name: Copyright Tariff Setting and Issuance of Licences

Financial Resources:
($ thousands)

2008-09	2009-10	2010-11
2,606	2,606	2,606

Human Resources:
(Full-time Equivalents (FTE))

2008-09	2009-10	2010-11
17 FTE	17 FTE	17 FTE

The statutory mandate of the Board is to establish tariffs to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. It is by rendering decisions and issuing licences that the Board fulfill its mandate.

Both the copyright holders and users are stakeholders in this outcome. Consequently, interventions before the Board are thorough and sophisticated, involving experts witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence. In rendering decisions, the Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly time-consuming court challenges. The Board will be able to evaluate its achievement in this regard by performing evaluations and studies of the economic impact of the Board's decisions on particular sectors of the Canadian economy.

The Board is continuously looking for ways to improve the efficiency of the hearing process by minimizing the overall participants' expenses while ensuring that the process and the tariffs remain fair and equitable. The key partners in this endeavour are the private interest parties who appear before the Board, and include the various collective societies that represent rights owners and associations and organizations representing users of works.

Improving the efficiency of the regulatory process involves continual refinements in scheduling of witnesses, establishing and communicating the parameters of the hearing to participants, consulting with key stakeholders and developing codes of hearing practice and related guidelines for the conduct of hearings. By improving the efficiency of the tariff hearing process, this activity is expected to contribute to the important objective of reducing the regulatory burden. It is by performing evaluations of the time duration of the process and of participants' satisfaction that the Board will be able to assess the performance achieved through the activity.

Pursuant to section 77 of the *Act*, the Board may grant licences that authorize the use of published works, fixed performances, published sound recordings and fixed communication signals if the copyright owner cannot be located. Since 1989, the Board has issued 214 such licences. The Board's objective with respect to this activity is to issue licences in a timely manner. The duration of the process will help the Board assess its performance with respect to this activity.

SECTION III – SUPPLEMENTARY INFORMATION

Table 1 - Departmental Link to the Government of Canada outcomes

Strategic Outcome: Fair decision-making to provide proper incentives for the creation and use of copyrighted works				
	Planned Spending			**Alignment to Government of Canada Outcome Area**
($ thousands)	**2008-2009**	**2009-2010**	**2010-2011**	
Program Activity: Copyright Tariff Setting and Issuance of Licences	2,606	2,606	2,606	An innovative and knowledge-based economy

Innovation through new knowledge has become the main source of competitive advantage in all sectors of economic activity and is closely associated with increased exports, productivity growth, and the creation of new firms. In this context, our country's handling of intellectual property matters is a critical element in our long-term success in innovation, and by extension, to our long-term economic health. The terms and conditions by which intellectual property owners (such as owners of copyrighted works) are compensated will largely define the incentive structure for innovation in and creation of copyrighted materials. In addition, the design and implementation of regulations can have a significant impact on innovation and competitiveness, particularly in the areas of intellectual property rights.

The Copyright Board of Canada recognizes the need to ensure an effective and efficient copyright regulatory regime in order to attain the maximum productivity in those sectors that create and use copyrighted works. Further, the strategic outcomes of a fair and competitive marketplace and reasonable opportunities for Canadian firms to export copyright protected goods and services in the music, content creation and programming areas, as well as the downstream broadcasting, publishing and entertainment industries will be impacted by the performance of the Copyright Board of Canada.